

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

TIMOTHY HARRY RACINE,

Plaintiff,

DECISION AND ORDER
No. 1:15-cv-00097 (LGF) (MAT)

-vs-

CAROLYN COLVIN, Acting
Commissioner of Social Security,

Defendant.

This matter comes before the Court following a Report and Recommendation (Dkt #20) filed on September 12, 2017, by the Honorable Leslie G. Foschio, United States Magistrate Judge, pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 72(b) and (c) of the Western District of New York. In his Report and Recommendation ("R&R"), Judge Foschio recommended that the decision issued by Carolyn Colvin, Acting Commissioner of Social Security¹ ("Defendant") denying benefits to Timothy Harry Racine ("Plaintiff") be affirmed in full, that Defendant's motion for judgment on the pleadings be granted, and that Plaintiff's motion for judgment on the pleadings be denied.

The R&R was served electronically to both parties on September

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Nancy A. Berryhill is now the Acting Commissioner of Social Security. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Nancy A. Berryhill should be substituted for Acting Commissioner Carolyn W. Colvin as the defendant in this suit. No further action needs to be taken to continue this suit by reason of the last sentence of section 205(g) of the Social Security Act, 42 U.S.C. § 405(g).

12, 2017. The parties were given fourteen (14) days from the date of their receipt of the R&R to file objections to it, and were specifically informed that any objections were due by September 27, 2017. To date, no objections have been filed, and neither party has sought an extension of time in which to file objections.

When reviewing a magistrate judge's report and recommendation, a district court is required to "make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made[,]" 28 U.S.C. § 636(b), and "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge[,]" id. Where no "specific written objection" is made to portions of the magistrate judge's report, the district court may adopt those portions, "as long as the factual and legal bases supporting the findings and conclusions set forth in those sections are not clearly erroneous or contrary to law." Eisenberg v. New England Motor Freight, Inc., 564 F. Supp.2d 224, 226 (S.D.N.Y. 2008) (citing Fed. R. Civ. P. 72(b); Thomas v. Arn, 474 U.S. 140, 149 (1985); other citation omitted). The district court is not required to review any portion of a magistrate judge's report that is not the subject of an objection. Eisenberg, 564 F. Supp.2d at 227 (citing Thomas, 474 U.S. at 149).

As noted above, no objections were made to any portion of the R&R. The Court accordingly has reviewed the R&R for clear error.

Finding that the R&R is not clearly erroneous or contrary to law, the Court accepts all of the findings and recommendations therein.

Accordingly, it is hereby

ORDERED that the R&R (Dkt #20) is adopted in its entirety; and it is further

ORDERED that Defendant's motion for judgment on the pleadings (Dkt #15) is granted; and it is further

ORDERED that Plaintiff's motion for judgment on the pleadings (Dkt #8) is denied.

The Clerk of Court is directed to close this case.

IT IS SO ORDERED.

s/ Michael A. Telesca

HONORABLE MICHAEL A. TELESCA
United States District Judge

DATED: October 11, 2017
Rochester, New York